Calendar No. 22

102D CONGRESS *1st Session*	SENATE	REPORT 102–13

RESOLUTION TRUST CORPORATION FUNDING ACT OF 1991

REPORT

OF THE

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

S. 419

together with

ADDITIONAL VIEWS

FEBRUARY 14, 1991.—Ordered to be printed

Filed under authority of the order of the Senate of February 5 (legislative day, January 3), 1991

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Mr. RIEGLE, from the Committee on Banking, Housing, and Urban Affairs, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 419]

INTRODUCTION

On February 5, 1991, the Committee on Banking, Housing, and Urban Affairs marked up and ordered to be reported an original bill, the Resolution Trust Corporation Funding Act of 1991, to amend the Federal Home Loan Bank Act to enable the Resolution Trust Corporation (RTC) to continue to meet its obligations to depositors.

SUMMARY OF PROVISIONS

The Resolution Trust Corporation Funding Act of 1991 has one major purpose: to provide $30 billion to the RTC so that it can continue its statutory task of protecting the insured depositors of failed savings and loan institutions. The RTC Oversight Board has estimated in testimony to the Committee that this amount will suffice through fiscal year 1991. The Act precludes the RTC from obligating after the end of fiscal year 1991 monies provided in the leg-

islation, except in cases where a bidder for a failed thrift has been selected.

In addition, the Act would accomplish three secondary objectives. First, it would make clear that directors, members, officers and employees of the FDIC, the RTC and the Oversight Board are immune from any potential personal liability under the Securities Act of 1933 in connection with the sale or transfer of RTC assets. Second, it clarifies that the RTC and the Oversight Board have the authority to indemnify directors, officers, and employees of the Corporation. Finally, it imposes certain additional reporting requirements on the Oversight Board.

RTC FUNDING FOR CURRENT CASE RESOLUTIONS

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) established the RTC to protect insured depositors of thrifts failing during the 3-year period beginning August 9, 1989. To accomplish this purpose, FIRREA gave the RTC long-term financing $50 billion—an amount requested by the Administration. Of that sum, Treasury appropriations comprised $18.8 billion, Federal Home Loan Bank contributions $1.2 billion, and borrowings through a new, off-budget agency—the Resolution Funding Corporation (REFCORP)—$30 billion. FIRREA also permitted the RTC to borrow money for working capital purposes, such as the temporary acquisition of assets from thrifts under its control, but was designed to limit such borrowings to the sum of the unused portion of the $50 billion of long-term financing, cash on hand, and 85 percent of other acquired assets.

The inadequacy of the RTC's funding became apparent within a few months after FIRREA's enactment. In the Spring of 1990, both the General Accounting Office and the Congressional Budget Office prepared analyses tending to show that the RTC lacked sufficient funds to accomplish its statutory responsibilities. On May 23, 1990, Treasury Secretary Nicholas F. Brady, the Chairman of the RTC Oversight Board, told the Banking Committee that "[i]t is now clear that the amounts projected and authorized for the RTC in FIRREA will fall short of what is required." [1] Secretary Brady indicated that the RTC would need some $39–82 billion in addition to amounts provided by FIRREA—an upward revision of 78–164 percent. Secretary Brady explained that the extent of losses in the individual failed savings and loans was turning out worse than the Administration's earlier estimates. In addition, he indicated that the Administration had revised its projection of the RTC's caseload from 500 institutions to a range of 722–1037 institutions.

In his testimony, Secretary Brady cited five factors that contributed to the sharp change in expectations:

> The first is a general decline in regional real estate markets, particularly commercial real estate. This has been true not only in the southwest, but in the northeast, southeast, and other parts of the country. Unfortunately, thrift assets are heavily concentrated in real estate whether through direc in-

[1] Statement of Secretary Nicholas F. Brady on behalf of the Oversight Board of the Resolution Trust Corporation before the Senate Committee on Banking, Housing, and Urban Affairs, May 23, 1990 (S. Hrg. 101-974), p. 22.

vestments, foreclosed property, or real estate loans. FIRREA sharply curtailed the amount of commercial real estate activities that thrifts can engage in going forward, but obviously, it could not address the losses already embedded in troubled thrifts.

A related concern involves the institutions that we expected would be the primary purchasers of thrift deposits and thrift assets—other depository institutions. It's no secret that healthy banks and thrifts have become much more leery about taking real estate assets onto their balance sheets in view of current market conditions. Unfortunately, that is exactly what the RTC is trying to sell to them. The result has been few "whole thrift" transactions, where both good and bad assets pass to an acquirer, and a few transactions where the acquirer takes *any* bad assets. This means more bad assets piling up at the RTC with lower expectations of the ultimate revenues they will produce.

A third factor is interest rates, which are now higher than we had projected. That translates directly into increased operating losses for thrifts in conservationships and indirectly into softer real estate markets, since interest rates always play a key role in that sector of the economy.

A fourth factor is unexpected losses in below-investment grade bonds, sometimes referred to as "high yield" or "junk" bonds. As you know, FIRREA required thrifts both to divest these bonds and to carry them on their books at market value. The market for these bonds has dropped off substantially in recent months, and virtually all of the major thrift holders of these bonds have been taken over by the RTC. The result is that the RTC is now one of the largest owners of junk bonds, with some $4 billion in its portfolio, and it could end up with substantially more. At the same time, we just don't know exactly how much these bonds will be worth when they are finally sold.

A fifth factor is that, at least for some purchasers, thrifts just are not as attractive a franchise relative to banks as they once were. This is true in part because it is no longer possible either to run a thrift with low capital or to invest insured deposits in risky activities like direct real estate investment. That is as it should be, since it was activities like thse that helped cause the problem.

But other restrictions imposed by FIRREA that are unrelated to safety and soundness, like the tighter qualified thrift lender test, may have also reduced the value of the thrift charter. However, it is too soon to say by how much.[2]

On July 31, 1990, Secretary Brady advised Chairman Riegle that "it will be necessary for the Congress to take some action before adjourning for the year," and suggested three funding alternatives that would be acceptable to the Administration. Under Secretary of the Treasury Robert Glauber reiterated this concern in testimony before the Banking Committee on September 26. On October 10,

[2] Ibid.

1990, in a letter to members of both the Senate and House Banking Committees, Secretary Brady warned that "RTC case resolution will virtually cease within the next two months unless additional funds are provided." [3] On behalf of the Administration, he requested legislation to provide funding through the end of the current fiscal year. Secretary Brady asked that Congress provide the RTC with additional, long-term financing of $40 billion and remove a limitation placed by FIRREA on the RTC's borrowing for working capital. He further indicated that, if Congress elected not to remove those limitations, the RTC would need an additional $17 billion—or a total of $57 billion.

Pursuant to that request, the Banking Committee reported an original bill on October 12, 1990, to provide the RTC with an additional $57 billion in funds to cover deposit insurance losses in failed savings and loan institutions. That legislation, the Resolution Trust Corporation Funding Act of 1990, passed the Senate on October 27, with a Committee amendment to reduce the funding amount to $10 billion and effect certain other changes. The House of Representatives, however, failed to enact parallel legislation prior to adjournment of the 101st Congress. Consequently, legislative efforts to provide the RTC with additional funds in the fall of 1990 were unsuccessful.

Following the adjournment of the 101st Congress, the Oversight Board directed the RTC to reinterpret the borrowing limitation to exploit a drafting error in the FIRREA legislation, thereby expanding the RTC's borrowing authority by several billion dollars. Nevertheless, the RTC postponed several major thrift resolutions originally scheduled for the winter of 1990–91, citing funding constraints as the reason for the delay.

On January 23, 1991, Secretary Brady appeared before the Committee in his capacity as Chairman of the Oversight Board again to request additional funds for the RTC's resolution activities. In his testimony, Secretary Brady indicated that, even freed from the borrowing limitation, RTC's loss funds will soon be virtually exhausted. Secretary Brady told the Committee that "if the RTC fulfills its goals for January and February, and does not receive additional funds, it will have expended all available loss funds and it will be forced to stop closing and selling institutions by the end of February." He further indicated that, without funds, the RTC will have to practice forbearance on the insolvent thrifts that remain open, and stated that the "RTC has estimated that forbearance for even one more quarter would cost the American taxpayers $750–$850 million."

This estimate for forbearance costs reflects the ability of resolutions to lower the costs of funds to insolvent thrifts to the level of Treasury interest rates, eliminate expenses of deposit gathering, and reduce asset management costs. But the estimate excludes additional potential costs of forbearance arising from deterioration of thrift asset and franchise values and from higher borrowing costs at marginal thrifts. Thus, it is possible that actual forbearance costs could significantly exceed the RTC's estimate.

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[3] These letters are contained in the appendix to this report.

In his testimony, Secretary Brady requested permanent funding for all potential future RTC outlays. Chairman Riegle and several other Committee members expressed concern, however, about the implications for Congressional oversight of providing a "blank check." On February 5, 1991, prior to the Committee's mark up, Treasury Under Secretary Robert R. Glauber wrote Chairman Riegle to say that the Oversight Board would welcome Committee action to provide a sum of $30 billion estimated to allow the RTC to operate through the end of the current fiscal year.[4]

The Committee believes the basis for the Administration's request for additional funds is clear and sound. As of January 31, preliminary data indicate the RTC had resolved 362 thrifts and spent $96 billion as follows:

[In billions of dollars]

Permanent losses on insurance obligations to depositors	39
Working capital	
Receivership assets not yet liquidated	43
Temporary advances to conservatorships	9
Receivership cash not yet transferred to the RTC	5
Subtotal	57
Total	96

Over the next few weeks, the RTC plans to close 20 thrifts currently in receivership with assets of $24 billion. The RTC expects losses associated with those resolutions to consume virtually all of the remaining $11 billion in funds provided by FIRREA. The precise value of the RTC's receivership assets in uncertain, especially in view of the poor condition of many of the assets in its portfolio and the current slump in real estate markets throughout the United States. The proceeds from sale of these assets, however, are not available to fund additional thrift resolutions. Under the RTC's financing system, the proceeds of asset sales must be used to repay the RTC's temporary borrowings of working capital from the Federal Financing Bank.

The task remaining before the RTC is formidable. As of January 31, 1991, 183 thrifts, with assets of $105 billion, were in RTC conservatorship and the Office of Thrift Supervision had designated an additional 161 thrifts with $115 billion in assets as likely to be placed in RTC conservatorship. The Office of Thrift Supervision recognized still 356 more thrifts, with assets of $191 billion, as "troubled" and in some danger of failure. Although the average loss per institution will likely decline as the RTC continues its work of closing failed institutions, the RTC's future costs will certainly exceed its costs to date.

This legislation would increase the RTC's permanent funding by $30 billion, bringing the total Congress has provided in such funding to $80 billion. The table below details the RTC's spending of permanent funding and temporary working capital through January 31, 1991, and projected spending in the remainder of FY 1991.

[4] This letter is contained in the appendix to this report.

[In billions of dollars]

	Permanent losses	Temporary working capital	Total
Total spending expected by Sept. 30, 1991	80	100	180
Less total spent as of Jan. 31, 1991	39	57	96
Expected spending in remainder of fiscal year 1991	41	43	84

As the table indicates, the Administration expects to spend $41 billion on permanent deposit insurance losses and roughly an equal amount in working capital to fund net temporary asset acquisition in the remainder of the current fiscal year. Only $11 billion of loss funds remain from FIRREA appropriated funds. Failure to provide the additional $30 billion needed would force the RTC to leave open 195 institutions with assets of $109 billion that it otherwise would and should close. These projections are consistent with those in the President's Budget. They assume that, over the next 8 months, the RTC will step up the pace of closing failed savings and loans. Over the past 8 months, spending on permanent losses has been $23 billion, while working capital debt has increased $26 billion.

The Administration now estimates the RTC's ultimate losses to be in the upper part of a $90–130 billion range, in present value terms. In combination with the $50 billion in loss funds provided by FIRREA, the $30 billion in loss funding provided by this Act will bring total loss funding thus far provided to $80 billion. Thus, according to Administration estimates, the RTC will need an additional $30–50 billion after FY 1991. Working capital borrowings should peak at $130–150 billion, also $30–50 billion above the year-end FY 1991 level, and then diminish over several years.

LIABILITY OF RTC, OVERSIGHT BOARD AND FDIC OFFICIALS

The Act also contains provisions that clarify the personal civil liability of RTC, Oversight Board and RDIC directors, members, officers and employees for acts or omissions in the scope of their employment in connection with the sale of assets.

Recently, members of the RTC Board of Directors received a legal opinion from private counsel advising them of potential personal liability for acts or omissions in connection with the sale of RTC assets. In his testimony before the Committee on January 23, Secretary Brady indicated that this potential personal liability threatened to slow the pace of RTC asset disposition.

Even though the Committee believes that current law provides immunity from personal liability, these provisions were included to clarify existing law in order to facilitate the sale of assets by the RTC and the FDIC. They make clear that the directors and employees of the RTC, the Oversight Board, and the FDIC are not subject to personal civil liability under the Securities Act of 1933 when they act within the scope of their employment in connection with asset disposition activities. These provisions also clarify the authority of the RTC and the Oversight Board to indemnify their personal (the FDIC already has such authority). The provisions of this bill do not limit personal liability for criminal actions or other actions out-

side the scope of employment, such as those taken for private gain. In addition, the provisions do not affect any cause of action or right to bring suit against the RTC, the Oversight Board, or the FDIC or the United States, including those based on the actions of its employees.

REPORTING REQUIREMENTS

The Act also contains provisions intended to provide the Congress with better information about the RTC's current financial condition and future projections. It requires the Oversight Board to provide the Congress with the RTC's audited financial statements within 180 days after the end of the fiscal year to which those statements apply. It also requires the Oversight Board to submit detailed financial operating plans to the House and Senate Banking Committees by the beginning of each calendar quarter. For each remaining quarter of the fiscal year, the plans should include estimates of the aggregate assets of the thrift institutions projected for resolution; the aggregate cost of such resolutions; aggregate asset sales and principal collections; and a pro forma financial statement for the Corporation at the end of each quarter. Finally, the Act requires the Director of the Office of Thrift Supervision to provide the Oversight Board with a list of savings associations that are projected to fail during the current and following fiscal years. The Oversight Board is required to provide the aggregate number and assets of the insolvent and projected insolvent institutions to Congress within 60 days after the end of each calendar quarter.

These reports are not expected to cause any appreciable increase in reporting burden to the RTC or the Oversight Board. Similar reports are currently produced as a matter of Administration policy. The reporting provisions of this Act are intended only to make certain important additions to those reports and ensure their availability on a timely basis. The Committee is concerned that it has not always received information about RTC activities in a sufficiently detailed and organized manner, or on a timely basis. Because of the enormous scale and unprecedented expense of RTC's operations, appropriate Congressional oversight is impossible without timely data. Some reports have missed legal deadlines, and the Committee never received an audited financial statement or a financial operating plan for the current period. Accordingly, the Act provides that if any current delinquency develops, the responsible agency officials will be required to appear before the appropriate Congressional committees to explain the delay.

REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement regarding the regulatory impact of the bill. The bill provides funding to continue an existing program to meet prior Federal Government financial obligations. Any regulatory impact will be only incidental to the need to make required payments.

CHANGES IN EXISTING LAW

In the opinion of the Committee, it is necessary to dispense with the requirements of section 12 of Rule XXVI of the Standing Rules of the Senate in order to expedite the business of the Senate.

COST OF THE LEGISLATION

The Committee has requested a cost estimate of this legislation under the provisions of section 403 of the Congressional Budget Act of 1974. The cost estimate of the Congressional Budget Office appears below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 7, 1991.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed the Resolution Trust Corporation Funding Act of 1991, as ordered reported by the Senate Committee on Banking, Housing, and Urban Affairs on February 5, 1991. This legislation would appropriate $30 billion to the Resolution Trust Corporation (RTC) to pay for insurance losses in failed savings and loans through fiscal year 1991. Because the budget treats payments for protecting insured deposits as mandatory rather than discretionary spending, the CBO baseline already includes the spending that would be authorized by this bill. As a result, enacting this bill would not increase outlays relative to the baseline.

This bill would also require the RTC to prepare detailed financial statements, as well as require the Oversight Board of the RTC to report on troubled savings and loans that are likely to be transferred to RTC. Finally, the bill would clarify the liability under the Securities Act of 1933 of employees with responsibility for disposing of certain assets. None of these provisions is expected to result in any significant cost to the Federal Government.

RTC Spending in 1991.—In 1989, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) established the RTC and authorized $50 billion for the agency to sell or liquidate hundreds of insolvent thrifts. The $50 billion came from three sources: $18.8 billion from Treasury appropriations; $1.2 billion from the Federal Home Loan Banks; and $30 billion borrowed from the private capital markets by a newly established off-budget corporation, the Resolution Funding Corporation (REFCORP). We expect that the RTC will have exhausted nearly all of this funding by the end of February.

This bill would provide an additional $30 billion to allow the RTC to continue resolving failed institutions through September. In addition, the RTC would receive income from sales of assets acquired when closing institutions. FIRREA also allows the RTC to issue notes and guarantees up to certain statutory limits based on the value of RTC's assets and the amount of funds contributed by REFCORP. The RTC has borrowed from the Federal Financing

Bank (FFB), an arm of the Treasury, to temporarily finance the purchase of assets from failed thrifts.

CBO expects that if this bill were enacted before April, RTC's net outlays would total about $80 billion in 1991, which is consistent with our current baseline estimate. This estimate of net outlays in 1991 includes about $20 billion in net disbursements through March; about $30 billion in additional losses, which would be covered by the funds provided in this bill; and the remainder in net disbursements for working capital which would be financed by borrowing from the FFB. The CBO baseline projections assume that RTC will need a total of $155 billion to cover insurance losses incurred in closing insolvent thrifts through 1994—or $75 billion beyond the levels already appropriated ($50 billion) and provided in this bill ($30 billion).

Pay-As-You-Go Considerations.—The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting mandatory spending. Spending necessary to meet the government's existing deposit insurance commitments is excluded from this requirement, and is not limited in any way under the new budget process. Allowing RTC to continue resolving insolvent savings and loans is treated as mandatory spending in recognition of a prior government commitment. As a result, the increases in spending authorized by this bill are already included in the baseline and would not be included in the pay-as-you-go scoring.

We do not expect that the budgets of state or local governments would be significantly affected by enactment of this bill.

If you wish further details of this estimate, we would be pleased to provide them. The CBO staff contact is Mary Maginniss, who can be reached at 226–2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

ADDITIONAL VIEWS OF SENATOR RICHARD SHELBY

I voted against providing additional funds to the Resolution Trust Corporation at this time because I do not believe that the Administration has sufficiently demonstrated that it has exhausted every effort to explore alternative funding options before seeking additional resources from the American taxpayers. In 1989, the Congress provided financing of $50 billion to the Resolution Trust Corporation. This sum was determined and requested by the Administration.

As of November 30, 1990, the RTC held $144.1 billon in assets in conservatorship and receivership. The failure of the RTC to dispose of these assets expeditiously contributes to the escalating cost of the thrift crisis resolution. The asset disposition process has been characterized by bureaucratic sluggishness and inflexibility in spite of the fact that liquidating assets in an efficient and timely way would reduce asset management costs and could provide additional loss funds if the RTC's present financing system was modified.

The $30 billion authorized in this legislation brings cumulative loss expenditures to $80 billion and the Administration has already indicated that additional resources will be necessary. Taxpayers should not be penalized by bureaucratic failure to efficiently dispose of assets. If Congress denied the Administration's request for additional revenues, the Resolution Trust Corporation, in conjunction with the Administration, would be forced to explore more thoroughly other funding options, potentially saving taxpayers billions of dollars.

RICHARD SHELBY.

ADDITIONAL VIEWS OF SENATOR GARN

It has never been a good idea to keep bankrupt savings and loans open. The painful reality is that the longer that it takes to dispose of bankrupt thrifts, the greater the cost of doing so becomes. Unfortunately, when Federal resolution funds are insufficient, there are few alternatives to keeping dead thrifts open, which drives up the eventual cost to the taxpayer. The funding provided in this legislation will be used to meet the solemn commitment of the Federal Government to the millions of Americans holding insured deposits in failed savings and loans. This is not a new obligation. Neither is it an obligation that will go away. The number of bankrupt but still operating thrifts is growing. In this process, the clock has been against us. Delay increases the cost to the taxpayer.

The Senate Banking Committee has appropriately made its first order of business this year the enactment of legislation providing necessary funds to allow the Resolution Trust Corporation (RTC) to proceed at full speed to shut down failed thrifts and protect depositors. We hope that this legislation will become law without delay. One of the most important contributions that can be made to stimulate the U.S. economy would be to remove the cloud the thrift crisis has cast over our financial system.

Last fall the Senate acted promptly to provide the resources necessary for the RTC to continue full operations. Unfortunately, the House of Representatives failed to take up the measure. The RTC estimates that the resultant funding limitations have added between $250 million and $300 million to the overall cost, with an additional cost of $750 million if RTC activities are delayed for an additional quarter. Of all of the unfortunate costs in this catastrophe, the most unfortunate are the ones that could have been avoided.

JAKE GARN.

APPENDIX

THE SECRETARY OF THE TREASURY,
Washington, July 31, 1990.

Hon. DONALD W. RIEGLE, Jr.,
U.S. Senate, Washington, DC.

DEAR DON: This letter is to respond to the inquiry which you have sent, along with Senators Sasser and Byrd, about funding for the Resolution Trust Corporation (RTC). Specifically, you have asked for an assessment of RTC's near term funding needs.

In the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA), Congress provided the RTC with $50 billion to fulfill the government's pledge to insured depositors in failed thrifts. It allows the RTC to enter into obligations in excess of that amount, but limits the amount of loss which the RTC may incur to $50 billion.

In testimony before the Banking Committee on May 23, we stated that the RTC could, with an aggressive schedule of case resolutions, run out of loss funds by the end of this calendar year or early next. That projection has not changed. It appears unlikely that the RTC will have any substantial amount of loss funds to carry it beyond December 1990.

As of July 2, 1990, the RTC had resolved 207 failed thrift institutions with estimated losses of $24.6 billion. The RTC plans to resolve another 77 cases during the fourth quarter of fiscal year 1990, for which losses are estimated at $11.6 billion. Adding in administrative expenses not reimbursed by receiverships and the initial use of the accelerated resolution program brings total estimated losses incurred by the RTC to $37.3 billion by the end of the fiscal year.

We have not received from the RTC an operating plan for the first quarter of fiscal 1991. It is reasonable to assume, however, that most or all of the remaining $12.7 billion in loss funds could be expended during that period. Near the end of December 1990, case resolutions would cease unless Congress provided additional authority.

There is a second funding issue which directly affects the RTC's ability to operate. As you know, the RTC borrows from the Federal Financing Bank (FFB) for working capital and enters into other obligations in the course of resolving failed institutions. FIRREA contains a limit on the maximum amount of obligations which the RTC can have outstanding.

When the Oversight Board appeared before the Banking Committee in May, we stated that the RTC is likely to run up against FIRREA's obligation limitation as soon as or sooner than it uses up the

$50 billion. It now appears that the cap will begin to bind by the start of the first quarter of fiscal year 1991. This will restrict the RTC's ability to borrow for working capital, which in turn would place severe limitations on its ability to proceed with resolutions.

A literal reading of the note cap would allow the RTC to borrow for working capital at least well into fiscal year 1991. Such a reading would include only REFCORP contributions (not Treasury contributions) in the calculation, which would give the RTC an additional $18.8 billion to collateralize working capital borrowings.

In the absence of action by Congress, we would be faced with a choice between using the $18.8 billion to raise working capital and shutting down the resolution activity of the RTC. We would not, however, approve any RTC funding plan which relies on this additional authority without first advising Congress.

Finally, you have asked about RTC funding requirements for fiscal year 1991. As we have testified, a representative range of the resources the RTC may need in fiscal year 1991 to cover losses should be from slightly over $30 billion to slightly over $50 billion. We estimate that working capital needs should be from $20 to $40 billion, although if asset sales are significantly lower than projected, working capital needs could be higher.

It is clear that Congress must act to provide additional resources to the RTC before the end of the year to keep the cleanup process going. While, as we said in our May 23 testimony, funds will have to come from the Treasury, there are a number of alternatives from which to choose.

One alternative would be to consider appropriating an amount sufficient to keep resolutions going into the beginning of calendar year 1991. At that point, funding legislation could be considered against the backdrop of the study of federal deposit insurance mandated by FIRREA and which the Treasury has indicated it expects to submit at the end of the year.

We estimate that an appropriation of $5 billion, combined with a literal reading of the obligation limitation, should allow the RTC to continue resolution activity through January 1991. An appropriation of about $10 billion (and the same reading of the note cap) should fund resolutions through February.

A second alternative would be to provide the RTC with permanent, indefinite authority to complete the job of resolving failed thrifts. The government has already incurred the obligation to insure deposits and has no choice but to provide funding. Such authority would permit the process to continue uninterrupted by potential funding delays.

A third alternative would be to provide funding in an amount likely to cover estimated needs for fiscal year 1991 or another intermediate period.

Whatever alternative is chosen, it will be necessary for the Congress to take some action before adjourning for the year. Moreover, it will be necessary to address the limitations imposed by the note cap. The RTC cannot be allowed to run out of money, causing the process to grind to a halt.

The Treasury and the Oversight Board stand ready to work with the Congress to develop legislation based on any of the proposals outlined above or to explore additional options.

Thank you for the opportunity to respond to these questions about the RTC's funding needs.

Sincerely,

NICHOLAS F. BRADY.

THE SECRETARY OF THE TREASURY,
Washington, October 10, 1990.

Hon. DONALD W. REIGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR DON: The Resolution Trust Corporation (RTC) has submitted a proposed operating plan projection that RTC case resolutions will virtually cease within the next two months unless additional funds are provided and RTC borrowing authority is clarified. Accordingly, we repeat our request that Congress address both of these constraints before it adjourns in order to avoid an interruption of RTC operations. This request is fully consistent with the Budget Resolution, which assumes sufficient funding for RTC resolutions and which recognizes that RTC spending is a mandatory federal obligation. The request is also consistent with earlier requests made since last May in testimony before Committees of both Houses. As the end of the session draws near, the public interest requires that we proceed in a bipartisan manner to assure that the RTC can continue with its important work.

ADDITIONAL FUNDING

The RTC projects that it will use nearly all—about $49 billion—of the $50 billion in loss funds provided by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) by the end of this calendar year (this assumes resolution of the borrowing cap issue, discussed below). As we have indicated in recent testimony and correspondence, there are several acceptable approaches to providing additional funds.

While one appropriate method would be a permanent, indefinite appropriation—which recognizes the mandatory character of RTC spending—we understand that Congress may be more inclined to provide interim funding for some or all of fiscal year 1991. As we have stated previously, we would support such an interim approach. Forty billion dollars in appropriations beyond currently authorized spending should be sufficient to fund the losses in RTC case resolutions through the end of fiscal year 1991, and is consistent with RTC Chairman Seidman's recent testimony.

THE BORROWING CAP

The RTC's second constraint is the limitation on RTC borrowing for working capital (the "borrowing cap"). The current RTC interpretation of the cap requires the RTC to set aside a reserve equal to 15 percent of outstanding borrowings, even though the borrowings must be fully backed with RTC assets marked to fair market value. This reserve cannot be spent to resolve losses in failed thrifts. Consequently, the RTC would be forced to cease operations in the next two months, in the absence of Congressional action,

even though it will still have over $10 billion of the $50 billion in loss funds provided in FIRREA.

This problem must be addressed, or the borrowing cap will continue to prematurely halt RTC operations before additional loss funds authorized by Congress are spent. There are two potential solutions.

First, Congress could provide additional funds to be used as the 15 percent reserve. These extra funds could not be spent, and would therefore constitute a kind of "sterile reserve." As a result, for the full fiscal year 1991, this option would require an additional $17 billion appropriation for the sterile reserve above and beyond the $40 billion appropriation necessary to pay for RTC losses.

Second, Congress could eliminate the 15 percent reserve, while still including strict safeguards to ensure that all RTC borrowing is backed by RTC assets. We believe this is the better way to proceed, because the effect on RTC spending would be exactly the same as the first option, but would not require a substantial additional appropriation that will not be spent.

Finally, as you know, the General Accounting Office has issued a report concluding that the literal language of the borrowing cap allows the RTC to spend the reserve to resolve losses in failed thrifts, notwithstanding the current RTC interpretation. This literal interpretation would also require no additional appropriations beyond those required to pay for actual losses.

CONCLUSION

In sum, to prevent a termination of RTC case resolutions, Congress must provide additional RTC funds and address the borrowing cap issue before it adjourns.

Sincerely,

NICHOLAS F. BRADY.

DEPARTMENT OF THE TREASURY,
Washington, February 5, 1991.

Hon. DONALD W. RIEGLE, Jr.,
Chairman, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As the Chairman of the Oversight Board said in testimony before your Committee on January 25, the Board prefers full funding for RTC operations in resolving the thrift crisis. However, as the Chairman indicated, the Board would welcome prompt Committee action in authorizing $30 billion to permit RTC to operate through the fiscal year. As he said, these funds will be needed to permit RTC to operate after February 28.

Sincerely,

ROBERT R. GLAUBER.

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